

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10
11

12 INTERACTIVE EDUCATION) CV 18-cv-7379 RSWL (Ex)
13 CONCEPTS, INC., a)
14 California Corporation; and)
15 IMPROV TVS, INC., a)
16 California Corporation,)
17 Plaintiffs,)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

**ORDER re: Defendant's
Motion to Dismiss for
Lack of Personal
Jurisdiction [15]**

v.

18 TCDL TEXAS, INC., a Texas)
19 Corporation; THOMAS)
20 CASTILLO, an individual;)
21 and DOES 1 through 10,)
22 inclusive,)
23)
24)
25)
26)
27)
28)

Defendants.

Plaintiffs Interactive Education Concepts, Inc.
("IEC") and Improv TVS, Inc. ("TVS") (collectively,
"Plaintiffs") brought the instant Action against
Defendants TCDL Texas, Inc. ("TCDL"); Thomas Castillo
("Castillo"); and Does 1 through 10, inclusive
(collectively, "Defendants") for copyright infringement

1 and breach of contract, among other claims. Currently
2 before the Court is Defendants' Motion to Dismiss for
3 Lack of Personal Jurisdiction or Improper Venue or,
4 alternatively, to Transfer Venue [15] ("Motion").
5 Having reviewed all papers submitted pertaining to this
6 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
7 Court **GRANTS** Defendant's Motion to Dismiss for Lack of
8 Personal Jurisdiction.

9 I. BACKGROUND

10 A. Factual Background

11 IEC and TVS are California corporations with their
12 principal places of business in Los Angeles. Compl. ¶¶
13 6-7, ECF No. 1. Plaintiffs provide online defensive
14 driving courses throughout the United States under the
15 brand "IMPROV." Id. ¶ 1. Plaintiffs own all
16 copyrights in their courses and on their website. Id.
17 ¶¶ 1, 15. In 1999, Improv West Associates ("IWA"),
18 owner of the Improv Comedy Club franchise, granted TVS
19 an exclusive nationwide license to use the IMPROV
20 trademarks with Plaintiffs' driving courses. Id. ¶¶ 2,
21 17. This license allows TVS to authorize entities
22 related to it the right to use the trademarks in
23 connection with Plaintiffs' courses. Id. ¶ 18.

24 TCDL is a Texas corporation with its principal
25 place of business in Texas. Id. ¶ 8. TCDL provides
26 defensive driving courses in Texas, pursuant to a
27 license granted by the State of Texas with curriculum
28 approved by the Texas Education Agency. Id. ¶¶ 4, 22.

1 Castillo is the President of TCDL and a resident of
2 Texas. Id. ¶ 9. In 1986, IWA granted Castillo a
3 license to operate Improv Comedy Club entertainment
4 venues in Dallas, Texas. Id. ¶¶ 3, 20. This license
5 was amended in 1994 to allow Castillo to operate IMPROV
6 traffic schools located anywhere in the Dallas and
7 Tarrant counties of Texas. Id. Plaintiffs assert that
8 the license was further amended in 2009 to restrict
9 Castillo's use of the IMPROV mark on the Internet
10 websites created and managed specifically for the duly
11 licensed Improv clubs within Dallas and Tarrant
12 counties.

13 Plaintiffs allege that Defendants were restricted
14 to offering in-person, classroom driver education
15 courses in Dallas and Tarrant counties by their license
16 agreement with IWA. Id. ¶ 22. As such, Plaintiffs
17 allege that Castillo traveled to California to meet
18 with Plaintiffs' principal, Gary Aleksintser (aka Gary
19 Alexander, "Alexander"), to propose that IEC offer its
20 online courses in Texas under the umbrella of
21 Defendants' Texas licenses. Id. ¶ 22.

22 In January 2012, IEC and TCDL entered into a
23 written agreement (the "License Agreement"), pursuant
24 to which, TCDL granted an exclusive license to IEC to
25 operate an online course under TCDL's State of Texas
26 licenses. Id. ¶ 6. Around March 2017, Plaintiffs
27 discovered Defendants were offering an online defensive
28 driving course on Defendants' website that allegedly

1 infringed Plaintiffs' copyrights and acted as a breach
2 of the License Agreement. Id. ¶¶ 26-28.

3 **B. Procedural Background**

4 Plaintiffs filed their Complaint [1] on August 22,
5 2018, alleging copyright infringement, false
6 advertising, breach of contract, and unfair
7 competition. Defendants filed their Motion to Dismiss
8 for Lack of Jurisdiction or Improper Venue or,
9 Alternatively, to Transfer Venue [15] on October 15,
10 2018. Plaintiffs filed their Opposition [19] on
11 October 26, 2018. On October 27, 2018, Plaintiffs
12 filed Evidentiary Objections [20] to the Declaration of
13 Thomas Castillo [15-2]. On November 6, 2018,
14 Defendants filed their Reply [21], Evidentiary
15 Objections [22] to the Declaration of Gary Aleksintser
16 [19-1], and a Response to Plaintiffs' Evidentiary
17 Objections [23].

18 **II. DISCUSSION**

19 **A. Legal Standard**

20 When a defendant moves to dismiss for lack of
21 personal jurisdiction, the plaintiff bears the burden
22 of demonstrating that the Court may properly exercise
23 jurisdiction over the defendant. Pebble Beach Co. v.
24 Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006). Absent
25 formal discovery or an evidentiary hearing, a plaintiff
26 need only make a prima facie showing that jurisdiction
27 is proper to survive dismissal. Id. at 1154.

28 To satisfy this burden, a plaintiff can rely on the

1 allegations in his complaint to the extent they are not
2 controverted by the moving party. Barantsevich v. VTB
3 Bank, 954 F. Supp. 2d 972, 982 (C.D. Cal. 2013). If
4 defendants adduce evidence controverting the
5 allegations, however, the plaintiff must "come forward
6 with facts, by affidavit or otherwise, supporting
7 personal jurisdiction." Id. at 982 (citation omitted).
8 "Conflicts between parties over statements contained in
9 affidavits [or declarations] must be resolved in the
10 plaintiff's favor." Schwarzenegger v. Fred Martin
11 Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). "At the
12 same time, however, the plaintiff must submit
13 admissible evidence in support of its prima facie
14 case." Am. Inst. of Intradermal Cosmetics, Inc. v.
15 Soc'y of Permanent Cosmetic Prof'ls, No. CV 12-06887
16 GAF (JCGx), 2013 WL 1685558, at *4 (C.D. Cal. Apr. 16,
17 2013).

18 Generally, "personal jurisdiction over a defendant
19 is proper if it is permitted by a long-arm statute and
20 if the exercise of that jurisdiction does not violate
21 federal due process." Pebble Beach, 453 F.3d at 1154-
22 55. California authorizes jurisdiction to the full
23 extent permitted by the Constitution. See Cal. Code
24 Civ. Proc. § 410. Therefore, the only question the
25 Court must ask is whether the exercise of jurisdiction
26 over Defendants would be consistent with due process.
27 Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &
28 Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003).

1 Due process requires that a defendant must have
2 such "minimum contacts" with the forum state that
3 "maintenance of the suit does not offend traditional
4 notions of fair play and substantial justice." Int'l
5 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).
6 Minimum contacts requires that the defendant must have
7 purposefully availed itself of the privilege of
8 conducting activities within the foreign jurisdiction,
9 thereby invoking the benefits and protections of the
10 foreign jurisdiction's laws. See Asahi Metal Indus.
11 Co. v. Sup. Ct. of Cal., 480 U.S. 102, 109 (1987).

12 There are two recognized bases for exercising
13 jurisdiction over a nonresident defendant: (1) "general
14 jurisdiction," which arises where a defendant's
15 activities in the forum are sufficiently "substantial"
16 or "continuous and systematic" to justify the exercise
17 of jurisdiction over him in all matters; and (2)
18 "specific jurisdiction," which arises when a
19 defendant's specific contacts with the forum give rise
20 to the claim in question. Helicopteros Nacionales de
21 Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984).

22 **B. Discussion**

23 1. Evidentiary Objections

24 Plaintiffs make six evidentiary objections to
25 statements made in the Declaration of Thomas Castillo.
26 See Pls.' Evid. Objs., ECF No. 20. The Court **OVERRULES**
27 **as Moot** Objection Nos. 1-5, as the evidence is not
28

1 relied upon by the Court. Plaintiffs' Objection No. 6¹
2 that the advertisement on TCDL's website constitutes
3 inadmissible hearsay, is also **OVERRULED** because the
4 objected to statement is not being used for the truth
5 of the matter asserted, but rather, it is being offered
6 to show that the advertisements appearing on TCDL's
7 website were not directed to California. As such, the
8 evidence proffered is not inadmissible hearsay. See
9 Fed. R. Evid. 801(c).

10 Defendants make six evidentiary objections to
11 statements contained in the Declaration of Gary
12 Aleksintser. See Defs.' Evid. Objs., ECF No. 22.
13 Defendants' Objections Nos. 1, 4, 5, and 6 are
14 **OVERRULED as Moot** because the Court does not rely on
15 the objected to material in its analysis. Defendants'
16 Objection No. 2, to Alexander's statement that Castillo
17 "tried to convince IEC to do business with TCDL," on
18 the grounds that Alexander lacks personal knowledge of
19 Castillo's intent and the testimony is speculative and
20 conclusory, is **OVERRULED** because the Court relies on
21 the statement only to show the parties disagree on the
22 facts surrounding this case. Defendants' Objection No.
23 3 to Alexander's description of the contents of the
24 October 27, 2010 email is **SUSTAINED** because the email

26 ¹ The objected to portion of the declaration states,
27 "[t]hose advertisements state that the course is licensed by the
28 State of Texas, and that the course is offered for those persons
seeking dismissal of tickets issued in the State of Texas." Pl.
Evid. Objs., No. 6.

1 itself (Aleksinster Decl. Ex. C, ECF No. 19-1) is the
2 best evidence.

3 2. Personal Jurisdiction

4 a. *General Jurisdiction*

5 General jurisdiction over a foreign corporation is
6 appropriate when the corporation's "affiliations with
7 the State are so 'continuous and systematic' as to
8 render them essentially at home in the forum State."
9 Goodyear Dunlop Tires Operations, S.A. v. Brown, 564
10 U.S. 915, 919 (2011) (citing Int'l Shoe, 326 U.S. 310,
11 317 (1945)). TCDL is a Texas corporation with its
12 principal place of business in Texas. Compl. ¶ 8.
13 Moreover, Defendants assert that TCDL's sole business
14 is offering defensive driving classes in Texas, and
15 Plaintiffs do not contend otherwise. Mot. at 1:19-20.
16 As such, TCDL's contacts with California are not
17 substantial enough to render it "at home" in California
18 and general jurisdiction is not proper over TCDL.

19 General jurisdiction is also not proper over
20 Castillo. "For an individual, the paradigm forum for
21 the exercise of general jurisdiction is the
22 individual's domicile" Daimler AG v. Bauman,
23 571 U.S. 117, 137 (2014). Castillo has been a resident
24 of Dallas County, Texas, since 1985 and plans to
25 continue living in Dallas, Texas for the foreseeable
26 future. Castillo Decl. ¶ 2. Castillo owns a home in
27 Dallas and works there. Id. ¶ 2. Plaintiffs'
28 allegation that Castillo traveled to California on one

1 occasion to meet with Plaintiffs, is insufficient to
2 demonstrate Castillo is "at home" in California.

3 b. *Specific Jurisdiction*²

4 The Ninth Circuit employs a three-part test to
5 determine whether a court has specific jurisdiction
6 over a defendant:

7 (1) The non-resident defendant must purposefully
8 direct his activities or consummate some
9 transaction with the forum or resident thereof;
10 or perform some act by which he purposefully
11 avails himself of the privilege of conducting
12 activities in the forum, thereby invoking the
13 benefits and protections of its laws; (2) the
14 claim must be one which arises out of or relates
15 to the defendant's forum-related activities; and
16 (3) the exercise of jurisdiction must comport
17 with fair play and substantial justice, i.e. it
18 must be reasonable.

19 Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d
20 1218, 1227-28 (9th Cir. 2011) (citations omitted).

21 Plaintiffs bear the burden of proving the first two
22 prongs, and if Plaintiffs do so, the burden shifts to

23
24 ² Plaintiffs allege that Defendants, TCDL and Castillo, are
25 alter egos of one another. Compl. ¶ 12. In both the Defendants'
26 Motion and the Plaintiffs' Opposition, the parties combine the
27 specific jurisdiction analysis for both Defendants. Thus, the
28 Court also analyzes specific jurisdiction with respect to the
Defendants collectively. The Court notes that regardless of
whether the contacts are analyzed collectively or separately, the
result is the same.

1 Defendants to prove a "compelling case" the exercise of
2 jurisdiction would be unreasonable. Id. at 1228.

3 In evaluating the first prong, courts distinguish
4 between claims sounding in contract and claims sounding
5 in tort. See Schwarzenegger, 374 F.3d at 802. "A
6 purposeful availment analysis is most often used in
7 suits sounding in contract A purposeful
8 direction analysis . . . is most often used in suits
9 sounding in tort." Id. Because Plaintiffs assert
10 claims sounding in both tort and contract, both tests
11 are at issue. Picot v. Weston, 780 F.3d 1206, 1212
12 (9th Cir. 2015).

13 i. *Purposeful Direction*

14 To establish purposeful direction, Plaintiffs must
15 satisfy a three-part test derived from the Calder
16 effects test: Defendants must have "(1) committed an
17 intentional act, (2) expressly aimed at the forum
18 state, (3) causing harm that the defendant knows is
19 likely to be suffered in the forum state."
20 Schwarzenegger, 374 F.3d at 805 (citation omitted).

21 To commit an "intentional act" the defendant must
22 intend to perform the actual, physical act, rather than
23 the result. Id. at 797. Here, Plaintiffs allege TCDL
24 was offering an online driving course using the IMPROV
25 trademark that was nothing more than a copy of
26 Plaintiffs' Course, which constituted willful copyright
27 infringement. Compl. ¶¶ 26-27. Plaintiffs further
28 allege Defendants' website infringed Plaintiffs'

1 copyrights by copying text from IEC's website verbatim,
2 and that Defendants' website included advertising
3 information that is unique to Plaintiffs and is false
4 as to Defendants. Id. ¶ 28. Thus, Plaintiffs have
5 pled sufficient facts demonstrating Defendants acted
6 intentionally in using Plaintiff's course and
7 information on Defendants' website, regardless of
8 whether Defendants intended to engage in willful
9 copyright.

10 "The second part of the Calder-effects test
11 requires that the defendant's conduct be expressly
12 aimed at the forum." Brayton Purcell, 606 F.3d at 1129.
13 In evaluating this prong, the Court "must look to the
14 defendant's 'own contacts' with the forum, not to the
15 defendant's knowledge of a plaintiff's connections to
16 that forum." Axiom Foods, Inc. v. Acerchem Int'l,
17 Inc., 874 F.3d 1064, 1070 (9th Cir. 2017) (quoting
18 Walden v. Fiore, 571 U.S. 277, 289 (2014)). Here,
19 Plaintiffs allege that Defendants willfully infringed
20 Plaintiffs' copyright, and it can be inferred from the
21 pleadings that Defendants knew Plaintiffs were located
22 in California.³ However, defendants' own contacts with
23 California are not sufficient to satisfy the express
24

25 ³ For example, the License Agreement specifically refers to
26 IEC as a "Ca Corporation." Aleksinster Decl. Ex. C. Further,
27 prior to the parties meeting in California, Castillo sent an
28 email to Alexander, showing that he was aware Alexander was based
in California, "I may be out in L.A. . . . in the next 8 weeks so
we could get together." Id.

1 aiming prong.

2 First, the License Agreement itself is insufficient
3 to establish express aiming by the Defendants, even if
4 Plaintiffs' performed the bulk of their contractual
5 duties in California. See Burger King Corp. v.
6 Rudzewicz, 471 U.S. 462, 478 (1985) (holding that a
7 contract with a party in the forum state alone is
8 insufficient to establish minimum contacts); Walden,
9 571 U.S. at 285-86 (citations omitted) ("[I]t is . . .
10 insufficient to rely on . . . the 'unilateral activity'
11 of a plaintiff" in determining whether defendant's
12 connection with the forum is sufficient to support
13 jurisdiction).

14 Next, Plaintiffs allege that Defendants' website
15 constitutes express aiming, because TCDL advertised and
16 sold the online course at issue through its website.
17 Opp'n at 8:1-4. Defendants argue that the website is
18 "geographically irrelevant" in California because it
19 was designed to assist with the dismissal of traffic
20 violations in Texas only, that the website was passive
21 in the sense that customers came to it, rather than it
22 being directed to California, and that characterizing
23 the website as interactive would not establish a
24 substantial connection from Defendants to California.
25 Mot. at 9:3-10; Reply at 3:20-22. Defendants' website,
26 which offered a Texas Driver's Education course to
27 consumers who received traffic tickets in the State of
28 Texas, without more, is not "conduct connect[ing

1 Defendants] to the forum in a meaningful way." Walden,
2 571 U.S. at 290; see also Schwarzenegger, 374 F.3d at
3 799 (giving little weight to a similar argument and
4 stating that the plaintiff "maintain[ed] an Internet
5 website that [was] available for viewing in California
6 and, for that matter, from any Internet café in
7 Istanbul, Bangkok, or anywhere else in the world").
8 Thus, Plaintiffs have not established that Defendants'
9 purposefully directed their conduct to California, and
10 as such, the Court need not address the third prong of
11 the Calder test.

12 *ii. Purposeful Availment*

13 "An out-of-state party does not purposefully avail
14 itself of a forum merely by entering into a contract
15 with a forum resident." HK China Group, Inc., 417 F.
16 App'x. at 666 (citing Burger King Corp., 471 U.S. at
17 478). "[P]rior negotiations and contemplated future
18 consequences, along with the terms of the contract and
19 the parties' actual course of dealing" are also
20 considered. Burger King, 471 U.S. at 479.

21 Applying this standard, and based on many of the
22 same facts as discussed above, the Court concludes that
23 Plaintiffs have not established that Defendants
24 purposefully availed themselves of California. First,
25 the parties dispute whether they discussed the License
26 Agreement at the meeting in California. Even assuming
27 the License Agreement was discussed during the meeting,
28 the meeting was only one part of at least a year-long

1 course of negotiations.⁴ Plaintiffs do not argue that
2 any other meetings took place in California, and
3 provide no support for its assertion that Defendants
4 persistently reached out to Plaintiffs. Further, the
5 terms of the contract and the parties' actual course of
6 dealings do not reveal that Defendants' purposefully
7 availed themselves of California. The License
8 Agreement involves Defendants "sublicens[ing] [their]
9 approval [from the State of Texas] to operate school
10 and curriculum *in the State of Texas*" to Plaintiffs for
11 their online course, entitled "Aware Driver Texas,"
12 which Plaintiffs offered to drivers who received
13 traffic tickets in Texas. Pl.s' Opp'n, Ex. F (emphasis
14 added). The crux of the License Agreement concerns
15 Texas,⁵ and its only connection to California is that
16 Plaintiffs' reside there. Such connection insufficient
17 to support a finding that Defendants availed themselves
18 of doing business in California.

19 Given that Defendants' contacts with California are
20 too, "random, fortuitous, or attenuated" to confer
21 jurisdiction over Defendants, Walden, 571 U.S. at 286,
22 the Court **GRANTS** Defendants' Motion to Dismiss for Lack
23 of Jurisdiction. Because the Court lacks jurisdiction
24 over the Defendants, it need not address Defendant's
25

26 ⁴ See Aleksinster Decl. Exs. C-E (revealing emails between
27 the parties spanning from October 2010 to October 2011).

28 ⁵ Throughout the License Agreement, the parties referred to
Texas as the "Territory." See Pl.s' Opp'n, Ex. F.

1 Motion to Dismiss for Venue or Alternative Request to
2 Transfer Venue.

3 3. Jurisdictional Discovery

4 It is "within the sound discretion of the district
5 court" to decide whether to allow jurisdictional
6 discovery. Dale Tiffany, Inc. v. Meyda Stained Glass,
7 LLC, No. 2:17-CV-00536-CAS(AGRx), 2017 WL 4417585, at
8 *7 (C.D. Cal. Oct. 2, 2017) (citing Boschetto v.
9 Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008)). Here,
10 Plaintiffs request jurisdictional discovery on (1) the
11 parties' correspondence regarding solicitation and
12 negotiation of the License Agreement; (2) the locations
13 of individuals who received advertising of Defendants'
14 online course and who purchased the course; and (3) the
15 content of Castillo's declaration. Opp'n at 9:5-9.
16 However, Plaintiffs provide no support as to why
17 permitting discovery on these issues will change the
18 Court's analysis.

19 First, even if Plaintiffs discovered facts showing
20 that Defendants made a greater effort to contract with
21 Plaintiffs, this would still be inadequate to confer
22 jurisdiction over Defendants, given that other than
23 potentially one meeting, Defendants engaged in all
24 other negotiations from Texas, performed their
25 contractual duties from Texas, and the crux of the
26 License Agreement involves Texas. Moreover, even if
27 Plaintiffs adduced facts showing that some California
28 residents viewed or purchased Defendants' online

1 course, this would not show that Defendants
2 purposefully directed their conduct to California. The
3 course itself is geared towards Texas consumers who
4 received traffic tickets in Texas, and Plaintiffs
5 provide no evidence refuting Defendants' contention
6 that the advertisements on Defendants' website "are not
7 directed to the State of California or persons residing
8 in the State of California." Castillo Decl. ¶ 15. See
9 Terracom v. Valley Nat'l Bank, 49 F.3d 555, 562 (9th
10 Cir. 1995) ("[T]he Court need not permit even limited
11 discovery" where plaintiffs fail to show more than
12 speculative allegations of attenuated jurisdictional
13 contacts "in the face of specific denials made by
14 Defendants"). Lastly, Plaintiffs have not identified
15 why discovery of the contents of Castillo's declaration
16 would demonstrate that jurisdiction is proper. See
17 Barantsevich v. VTB Bank, 954 F. Supp. 2d 972, 996
18 (C.D. Cal. 2013) ("Jurisdictional discovery need not be
19 allowed . . . if the request amounts merely to a
20 'fishing expedition.'"). As such, the Court **DENIES**
21 Plaintiffs' jurisdictional discovery request in its
22 entirety.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 Based on the foregoing, the Court **GRANTS**
3 Defendants' Motion to Dismiss for Lack of Personal
4 Jurisdiction; **GRANTS as moot** Defendants' Alternative
5 Motion to Dismiss for Improper Venue or to Transfer
6 Venue; and **DENIES** Plaintiffs' request for
7 jurisdictional discovery.
8

9 **IT IS SO ORDERED.**

10
11 DATED: January 8, 2019

RONALD S.W. LEW

12 **HONORABLE RONALD S.W. LEW**
13 Senior U.S. District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28